

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 156 of 96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

SATISHKUMAR RAMESHCHANDRA VIRDA

..Petitioner(s)

Versus

STATE OF GUJARAT

..Respondent(s)

Appearance:

Shri N.D. Nanavaty, Senior Advocate, with Shri R.M.Chhaya, Advocate, for the Petitioner.

Shri A.G.Uraizee, Additional Public Prosecutor, for Respondents Nos. 1 and 2.

Shri Sunil C.Patel, Additional Central Government Standing Counsel, for Respondent No.3.

CORAM : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order of detention passed by the District Magistrate at Junagadh (respondent No.2 herein) on 27th July 1995 detaining the petitioner under section 3 (2) of the Prevention of Black Marketing and Maintenance of the Supply of Essential Commodities Act, 1980 (the Act for brief) is under challenge in this petition under Article 226 of the Constitution of India at the instance of the detenu himself.

2. It appears that the petitioner was found indulging in certain activities prohibited by the Act. Thereupon, the necessary detention order under section 3 (2) of the Act came to be passed on 27th July 1995. Together with the order of detention were supplied to the petitioner grounds of detention. A copy of the detention order together with the grounds of detention and the other relevant documents is at Annexure-A (collectively) to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the legality and validity of the detention order passed by respondent No.2.

3. Several grounds have been urged before me in support of this petition. Two grounds therefrom have however been highlighted. It has been urged by learned Counsel Shri Nanavaty for the petitioner that copies of some documents accompanying the grounds of detention were absolutely illegible and that has resulted in denial to the petitioner an opportunity to make effective representation against his detention. Learned Counsel Shri Nanavaty for the petitioner has also highlighted the fact of non-consideration of his representation against his detention by the Central Government.

4. The compilation containing the detention order, the grounds of detention and various documents accompanying such grounds of detention runs into about 1159 pages. Out of several documents forming the compilation, the documents at pages 231, 667, 703 and 1131 are substantially illegible in part. The documents at pages 989, 1103, 1111, 1117, 1137 and 1141 are absolutely blank. Learned Additional Public Prosecutor Shri Uraizee and learned Additional Central Government Standing Counsel Shri Patel have verified the compilation and have found the aforesaid pages to be illegible and blank. It thus becomes clear that legible copies of all the material documents relied on by respondent No.2 as the detaining authority have not been supplied to the petitioner.

5. It cannot be gainsaid that grounds of detention together with the material relied on by the detaining authority for deriving his subjective satisfaction for detaining the detenu as reflected in the grounds of detention are supplied to the detenu to enable him to make an effective representation against the detention order passed against him. The right of making effective representation against a detention order is enshrined in Article 22 (5) of the Constitution of India. It is no doubt a fundamental right. If legible copies of the relevant documents are not supplied to the detenu, he would not be in a position to make any effective representation against his detention order. That would amount to infringement of his fundamental right guaranteed under Article 22 (5) of the Constitution of India. His continued detention would then stand vitiated in such circumstances. The order of detention against the petitioner deserves to be quashed and set aside on this ground alone.

6. I am fortified in my view by the binding ruling of the Supreme Court in the case of DHARMISTA BHAGAT v. STATE OF KARNATAKA reported in 1989 Supp. (2) Supreme Court Cases at page 155. It has been held therein that non-supply of legible copies of title documents would vitiate the detention of the detenu under the law of Preventive Detention as it would violate the constitutional provision contained in Article 22 (5) of the Constitution of India.

7. In view of my aforesaid discussion, I have not thought it fit to dilate upon the ground of challenge to the detention order based on non-consideration of the representation made by the petitioner to the Central Government against his preventive detention under the Act.

8. In the result, this petition is accepted. The detention order passed by respondent No.2 on 27th July 1995 under section 3 (2) of the Act detaining the petitioner herein is quashed and set aside. The petitioner is ordered to be released forthwith if no longer required in any other case. Rule is accordingly made absolute with no order as to costs. Direct Service is permitted.

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